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KIRKLAND ELLIS

002

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
BLUE CROSS AND BLUE SHIELD OF NEW :  
JERSEY, INC., *et al.*, :

Plaintiffs, :

- against - :

PHILIP MORRIS, INCORPORATED, *et al.*, :

Defendants, :  
-----X

Jury Instructions

98 CV 3287 (JBW)

JACK B. WEINSTEIN,  
Senior District Court Judge:

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003

## XIII Verdict Form

1. Claim One: Common Law Fraud—Subrogation

A. For each defendant, has Empire proven its claim for common law fraud in subrogation, subject to a proven affirmative defense? [If your answer below is "yes" as to any defendant, go to Question B. If your answer is "no" as to all defendants, skip to Claim Two.]

Philip Morris Incorporated	Yes _____	No <input checked="" type="checkbox"/>
R.J. Reynolds Tobacco Company	Yes _____	No <input checked="" type="checkbox"/>
Brown & Williamson Tobacco Corporation	Yes _____	No <input checked="" type="checkbox"/>
British American Tobacco Co., Ltd.	Yes _____	No <input checked="" type="checkbox"/>
Lorillard Tobacco Company	Yes _____	No <input checked="" type="checkbox"/>
Liggett Group, Inc. and Liggett and Myers, Inc.	Yes _____	No <input checked="" type="checkbox"/>

B. If yes as to any defendant, what damages if any has Empire proven (subject to any affirmative defense proven by defendants) from April 29, 1992 to May 1, 2001?

\$ \_\_\_\_\_

If your answer is that Empire has proved damage proceed to question C. If you answer that Empire has not proved damages skip to claim Two.

C. Indicate only one answer for each defendant as to which you answered "Yes":

	Jointly liable (check)	Individually liable for the following share of damages from B, above
Philip Morris, Incorporated		\$
R.J. Reynolds Tobacco Company		\$
Brown & Williamson Tobacco Corp.		\$
British American Tobacco Company, Ltd.		\$
Lorillard Tobacco Company		\$
Liggett Group, Inc. and Liggett & Myers, Inc.		\$

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Claim Two: Deceptive Business Practices-Direct

For each defendant, has Empire proven its direct claim for deceptive practices under New York General Business Law Section 349 subject to a proven affirmative defense? [If your answer below is "yes" as to any defendant, go to Question B. If your answer is "no" as to all defendants, skip to Claim Three.]

Philip Morris Incorporated	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
R.J. Reynolds Tobacco Company	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Brown & Williamson Tobacco Corporation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
British American Tobacco Co., Ltd.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Lorillard Tobacco Company	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Liggett Group, Inc. and Liggett and Myers, Inc.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

- B. If yes as to any defendant, what damages if any has Empire proven (subject to any affirmative defense proven by defendants) from April 29, 1995 to May 1, 2001?

\$ 17,782,702

If your answer is that Empire has proved damage proceed to question C. If you answer that Empire has not proved damages skip to claim Three.

- C. Indicate only one answer for each defendant as to which you answered "Yes":

	Jointly liable (check)	Individually liable for the following share of damages from B, above
Philip Morris, Incorporated		\$ 6,757,426
R.J. Reynolds Tobacco Company		\$ 6,579,599
Brown & Williamson Tobacco Corp.		\$ 2,845,232
British American Tobacco Company, Ltd.		\$ 0
Lorillard Tobacco Company		\$ 1,511,529
Liggett Group, Inc. and Liggett & Myers, Inc.		\$ 88,916

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Claim Three: Deceptive Business Practices—Subrogation

For each defendant, has Empire proven its subrogated claim for deceptive practices under New York General Business Law Section 349 subject to a proven affirmative defense? [If your answer below is "yes" as to any defendant, go to Question B. If your answer is "no" as to all defendants, skip to Claim Four.]

Philip Morris Incorporated	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
R.J. Reynolds Tobacco Company	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Brown & Williamson Tobacco Corporation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
British American Tobacco Co., Ltd.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Lorillard Tobacco Company	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Liggett Group, Inc. and Liggett and Myers, Inc.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

B. If yes as to any defendant what damages if any has Empire proven (subject to any affirmative defense proven by defendants) from April 29, 1995 to May 1, 2001?

\$ 11,829,784

If your answer is that Empire has proved damage proceed to question C. If you answer that Empire has not proved damages skip to claim Four.

C. Indicate only one answer for each defendant as to which you answered "Yes":

	Jointly liable (check)	Individually liable for the following share of damages from B, above
Philip Morris, Incorporated		\$ 4,495,317
R.J. Reynolds Tobacco Company		\$ 4,377,020
Brown & Williamson Tobacco Corp.		\$ 1,892,765
British American Tobacco Company, Ltd.		\$ 0
Lorillard Tobacco Company		\$ 1,005,531
Liggett Group, Inc. and Liggett & Myers, Inc.		\$ 59,151

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Claim Four: RICO Section 1962(c)-Direct

For each defendant, has Empire proven its direct claim under RICO, subject to a proven affirmative defense? [If your answer below is "yes" as to any defendant, go to Question B. If your answer is "no" as to all defendants, skip to Claim Five.]

Philip Morris Incorporated	Yes	No	<input checked="" type="checkbox"/>
R.J. Reynolds Tobacco Company	Yes	No	<input checked="" type="checkbox"/>
Brown & Williamson Tobacco Corporation	Yes	No	<input checked="" type="checkbox"/>
British American Tobacco Co., Ltd.	Yes	No	<input checked="" type="checkbox"/>
Lorillard Tobacco Company	Yes	No	<input checked="" type="checkbox"/>
Liggett Group, Inc. and Liggett and Myers, Inc.	Yes	No	<input checked="" type="checkbox"/>

B. If yes as to any defendant, what damages if any has Empire proven (subject to any affirmative defense proven by defendants) from April 29, 1994 to May 1, 2001?

\$ \_\_\_\_\_

If your answer is that Empire has proved damage proceed to question C. If you answer that Empire has not proved damages skip to claim Five.

C. Indicate only one answer for each defendant as to which you answered "Yes":

	Jointly liable (check)	Individually liable for the following share of damages from B, above
Philip Morris, Incorporated		\$
R.J. Reynolds Tobacco Company		\$
Brown & Williamson Tobacco Corp.		\$
British American Tobacco Company, Ltd.		\$
Lorillard Tobacco Company		\$
Liggett Group, Inc. and Liggett & Myers, Inc.		\$

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Claim Five: RICO Section 1962(c) - Subrogation

For each defendant, has Empire proven its subrogated claim under RICO, subject to a proven affirmative defense? [If your answer below is "yes" as to any defendant, go to Question B. If your answer is "no" as to all defendants, skip to the end of the form.]

Philip Morris Incorporated	Yes _____	No <input checked="" type="checkbox"/>
R.J. Reynolds Tobacco Company	Yes _____	No <input checked="" type="checkbox"/>
Brown & Williamson Tobacco Corporation	Yes _____	No <input checked="" type="checkbox"/>
British American Tobacco Co., Ltd.	Yes _____	No <input checked="" type="checkbox"/>
Lorillard Tobacco Company	Yes _____	No <input checked="" type="checkbox"/>
Liggett Group, Inc. and Liggett and Myers, Inc.	Yes _____	No <input checked="" type="checkbox"/>

B. If yes as to any defendant, what damages if any has Empire proven (subject to any affirmative defense proven by defendants) from April 29, 1994 to May 1, 2001?

\$ \_\_\_\_\_

If your answer is that Empire has proved damage proceed to question C. If you answer that Empire has not proved damages stop here.

C. Indicate only one answer for each defendant as to which you answered "Yes":

	Jointly liable (check)	Individually liable for the following share of damages from B, above
Philip Morris, Incorporated		\$
R.J. Reynolds Tobacco Company		\$
Brown & Williamson Tobacco Corp.		\$
British American Tobacco Company, Ltd.		\$
Lorillard Tobacco Company		\$
Liggett Group, Inc. and Liggett & Myers, Inc.		\$

Foreman

Signature of Foreperson

6/4/01

Date

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